

June 13, 2022

Ms. Vanessa Countryman, Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Transmitted by email to rule-comments@sec.gov

Supplemental comments on Release No. 34-94062, "Amendments Regarding the Definition of 'Exchange' and Alternative Trading Systems (ATSS) That Trade U.S. Treasury and Agency Securities, National Market System (NMS) Stocks, and Other Securities"

Dear Ms. Countryman,

On April 18, 2022 Bond Dealers of America ("BDA") submitted comments on SEC Release No. 34-94062, "Amendments Regarding the Definition of 'Exchange' and Alternative Trading Systems (ATSS) That Trade U.S. Treasury and Agency Securities, National Market System (NMS) Stocks, and Other Securities" (the "ATS Proposal"). Since that time the Commission has reopened the comment period for the ATS Proposal.¹ In that context we offer these supplemental comments on Release No. 34-94062. BDA is the only DC-based group exclusively representing the interests of securities dealers and banks focused on the US fixed income markets. BDA's member firms are mostly mid-size broker-dealers and banks.

Interaction of Rules ATS and 15c2-11

On September 24, 2021 the staff of the SEC's Division of Trading and Markets issued a no-action letter related to the application of SEC Rule 15c2-11 to fixed income products.² This was the first time in the history of Rule 15c2-11 when the Commission recognized that the Rule applies to fixed income products; before the September 2021 no-action letter, Rule 15c2-11 was widely thought to apply to over-the-counter equities only. On December 16, 2021 T&M staff issued a second no-action letter on applying Rule 15c2-11 to fixed income, providing additional detail on how the no-action policy would be applied and detailing exemptions.³ Rule 15c2-11 requires dealers to review certain issuer information and disclosures and ensure the information they review is available publicly before publishing a quotation for an over-the-counter security (except municipal and government securities) to a quotation medium. Because the Commission had never applied Rule 15c2-11 to fixed income in the Rule's 50-year history, the decision to begin applying the Rule to bonds came as a surprise to the market. Considerable

¹ U.S. Securities and Exchange Commission, "Reopening of Comment Periods for 'Private Fund Advisers; Documentation of Registered Investment Adviser Compliance Reviews' and 'Amendments Regarding the Definition of 'Exchange' and Alternative Trading Systems (ATSS) That Trade U.S. Treasury and Agency Securities, National Market System (NMS) Stocks, and Other Securities,'" 87 FR 29059.

² Letter from Josephine J. Tao, SEC, to Racquell Russell, FINRA, September 24, 2021.

³ Letter from Josephine J. Tao, SEC, to Racquell Russell, FINRA, December 16, 2021.

confusion remains about what dealers must do to ensure they are in compliance with Rule 15c2-11 with respect to quotations for fixed-income securities.

Significant concern has arisen among broker-dealers based on previous Commission statements over the scope of Rule 15c2-11 in the context of Rule ATS and the ATS Proposal. For example, based on previous Commission interpretations of Rule 15c2-11,⁴ some dealers are concerned that any ATS that is not an Interdealer Quotation System (“IDQS”), including Communication Protocol Systems (“CPS”) which would become ATSs under the ATS Proposal, would be treated as quotation mediums under Rule 15c2-11. If this interpretation is correct and any non-IDQS ATS is treated as a quotation medium under Rule 15c2-11, the negative implications for the US fixed income markets and for BDA’s member firms would be significant. The ATS Proposal does not analyze the interaction between Rule 15c2-11 and the expansion of the definition of “exchange” and Regulation ATS to Communication Protocol Systems.

The application of Rule 15c2-11 is already creating confusion among broker-dealers as to how to comply. Since there is effectively no guidance from the Commission on some fundamental questions associated with Rule 15c2-11 and fixed income, such as the scope of the definition of quotation medium, firms are left to their own to devise compliance policies. One element of addressing 15c2-11 and fixed income for some firms will be to seek and provide liquidity through platforms which are not quotation mediums in order to avoid the expense and risk of complying with the Rule. But if all non-IDQS ATSs are quotation mediums as the Commission has previously suggested, the fallout from the decision to apply Rule 15c2-11 to fixed income would be even larger than we initially anticipated. This problem would affect all broker-dealers, but it would be particularly acute for mid-size dealers like most BDA members since they are not able to spread fixed compliance costs over as big a trading volume as larger firms.

The SEC’s December 2021 no-action letter on Rule 15c2-11 provides numerous exemptions from the Rule. Those exemptions, however, do not cover the entire universe of bonds to which the Rule otherwise applies. That will leave a significant volume of quotations for trades in corporate bonds and other products that do not qualify for an exemption and are fully subject to the Rule.

Moreover, applying Rule 15c2-11 to such a broad swath of electronic platforms would discourage the continued electrification of the bond markets. Traditionally the US bond markets traded by telephone. That’s still the case for a significant volume of bonds, but the markets have been evolving in the direction of more on-screen electronic trading. Electronic trading offers many advantages over voice trading such as reducing transaction costs. We believe the re-interpretation of 15c2-11 would have a negative effect on the growth of electronic trading. The combination of this re-interpretation of 15c2-11 and the re-definition of “exchange” would exacerbate that negative effect on electronic trading.

It appears that the Commission has not considered some key questions around how the amended definition of an “exchange” and expansion of Regulation ATS would interact with Rule 15c2-11 and the broader implications for the fixed income markets. In that regard, we encourage the Commission to address the following questions in your continued work related to updating and reforming Rule ATS.

⁴ See, for example, the staff no-action letter from Larry E. Bergman, SEC, to Howard Kramer, Schiff Hardin & Waite representing GlobeNet Securities Inc., October 6, 2000.

- If under the ATS Proposal, as some have suggested in the comments to the Commission, virtually all communications platforms become communication protocol systems and ATSs, has the Commission analyzed how market participants will be able to trade the significant number of securities that will not be exempt to trade on any electronic medium under Rule 15c2-11?
- Has the Commission analyzed the significant adverse effect that this could have on mid-size broker dealers, where electronic messaging and electronic trading systems provide scale?
- Does the Commission's economic analysis of the ATS Proposal account for the interaction of Rules ATS and 15c2-11 and the interpretation that all ATSs, including CPSs, would be quotation mediums in the context of Rule 15c2-11?

In the end the appropriate way for the Commission to address these issues is to properly amend Rule 15c2-11 to adapt the Rule for fixed income products through the normal rulemaking process, not by applying the Rule to fixed income through interpretation. We urge the SEC to suspend enforcement of Rule 15c2-11 with respect to quotations for fixed income products, draft amendments to the Rule which would apply Rule 15c2-11 to fixed income in a thoughtful and considered manner, seek public comment and amend the Rule formally, and permit the industry ample time to implement compliance programs. Not only would these actions address the issues we have raised here. They would also address the persistent confusion in the industry over how to comply with Rule 15c2-11 generally in a world where all ATSs may be quotation mediums.

We are pleased to offer these supplemental comments on the ATS Proposal. Please contact us if you have any questions.

Sincerely,



Michael Decker
Senior Vice President for Public Policy